



BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2023-0184]

RIN 1625-AA09

Drawbridge Operation Regulation; Maumee River, Toledo, OH

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to modify the operating schedule that governs the CSX Railroad Bridge, mile 1.07, the Wheeling and Lake Erie Railroad Bridge, mile 1.80, the Craig Memorial Bridge, mile 3.30, the Martin Luther King Jr. Memorial Bridge, mile 4.30, and the Norfolk Southern Railroad Bridge, mile 5.76, all over the Maumee River at Toledo, Ohio. The original regulation was published in 1986 and has been amended over the years but a full review of the regulations for the waterway has not been completed. The current regulations are cumbersome, difficult to understand, and cause confusion to recreational vessels and some drawtenders. We invite your comments on this proposed rulemaking.

DATES: Comments and relate material must reach the Coast Guard on or before

[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2023-

0184 using Federal Decision-Making Portal at <https://www.regulations.gov>.

See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail If you have questions on this temporary final rule, call or e-mail Mr. Lee D. Soule, Bridge Management Specialist, Ninth Coast Guard District; telephone 216-902-6085, e-mail Lee.D.Soule@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
CRSTF	Cuyahoga River Safety Task Force
DHS	Department of Homeland Security
FR	<i>Federal Register</i>
IGLD	International Great Lakes Datum of 1985
LWD	Low Water Datum based on IGLD85
OMB	Office of Management and Budget
ODOT	Ohio Department of Transportation
PAWSA	Ports and Waterway Safety Assessment
TMMS	Traffic Monitoring Management System
NPRM	Notice of Proposed Rulemaking
§	Section
U.S.C.	United States Code

II. Background, Purpose and Legal Basis

The Maumee River is formed at the confluence of the St. Joseph and St. Mary’s Rivers in the northeast corner of Fort Wayne, Indiana and flows 137 miles to Lake Erie. The Maumee River was designated an Ohio State Scenic River on July 18, 1974. The entire river was considered a navigable waterway until the maintenance of the locks were discontinued in 1913 and the head of navigation just past the US 20/Perrysburg-Maumee

Bridge at mile 14.72 was established. The rest of the Maumee River continues to be in an advance approval waterway jurisdiction. The Maumee River watershed is the largest of any river feeding the Great Lakes and supplies five percent of Lake Erie's water.

The mouth of the river at Toledo and Lake Erie is wide and supports considerable international and domestic commercial traffic, including oil, grain, and coal cargoes. Powered and unpowered recreational vessels utilize the entire river; however, the rapids at mile 15 are unpassable without an operable lock system.

The Maumee River from the head of navigation to the mouth of the river is crossed by ten bridges, four of which are movable. The vertical clearance of all bridges on the Maumee River are based on LWD.

The CSX Railroad Bridge, mile 1.07, is a swing bridge with a horizontal clearance of 143-feet in both left and right draws and a vertical clearance of 22-feet in the closed position and an unlimited clearance in the open position.

The Wheeling and Lake Erie Railroad Bridge, mile 1.80, is a swing bridge with a horizontal clearance of 134-feet in both left and right draws and a vertical clearance of 20-feet in the closed position and an unlimited clearance in the open position.

The Craig Memorial Bridge, mile 3.30, is a double leaf bascule bridge, that provides a horizontal clearance of 200-feet with a minimum vertical clearance of 34-feet with a vertical clearance of 44-feet available in the center 31-feet while in the closed position and an unlimited clearance in the open position.

The Martin Luther King Jr. Memorial Bridge (prior to 1989, the Cherry Street Bridge), mile 4.30, is a double leaf bascule bridge, that provides a horizontal clearance of 200-feet with a minimum vertical clearance of 34-feet with a vertical clearance of 44-feet

available in the center 31-feet while in the closed position and an unlimited clearance in the open position. The Martin Luther King Jr. Memorial Bridge is a Scherzer rolling lift bridge built in 1914 and is eligible for listing on the national register of historic places. It was rehabilitated in 2002 with an adverse effect. All of the movable bridge's superstructure and operating systems were replaced with a modern bascule span. It no longer conveys the technological significance of the Scherzer design due to loss of integrity of design and materials. The arches and piers are the only original fabrication remaining from 1914.

The Norfolk Southern Railroad Bridge, mile 5.76, is a swing bridge with a horizontal clearance of 115-feet in both left and right draws and a vertical clearance of 17-feet in the closed position and an unlimited clearance in the open position.

The CSX Railroad Bridge, mile 11.38, was a swing bridge with a horizontal clearance of 110-feet in both left and right draws and a vertical clearance of 53-feet in the closed position and an unlimited clearance in the open position. The bridge was allowed to remain closed by regulation when the upriver ship building facility closed. The bridge was removed in its entirety and at the District Commander's satisfaction in 2019.

On November 3, 1986, we published (51 FR 39858) in the Federal Register new regulations for the Maumee River's movable bridges under 33 CFR 117.855 (Maumee River) that included several schedules for the bridges, the new schedules were intended to ease the travel of motorists across the bridges while still allowing recreational and commercial commerce to travel the river.

Since 1986, operators of the recreational vessels using the large Pier 75 marina near mile 7 have claimed that the Norfolk Southern Railroad Bridge, mile 5.76, has repeatedly

refused to open for recreational vessels. Influenced by Norfolk Southern's failure to open for recreational vessels, marina owners and clients moved to a new marina near mile 1.07, eliminating most of the recreational vessel traffic in that part of the river. The Brennen Marina near mile 4.2 was relocated to the former Harrison Marina at mile 1. A smaller marina has been built near mile 3.30, but all the vessels in this marina can make it through all the bridges, except for the Norfolk Southern Railroad Bridge at mile 5.76, without an opening.

The current regulations governing the five Toledo-area moveable bridges are inconsistent and difficult to understand.

III. Discussion of Proposed Rule

We propose to require a 12-hour advance notice from December 15 through March 31. Each bridge owner will be responsible to provide to the District Commander an appropriate phone number to be advertised to the mariners in the Local Notice to Mariners and would be required to be included in the requirements of 33 CFR 117.55.

After careful review of the annual average vehicle counts at each highway bridge, we propose the hourly restrictions imposed on the recreational vessels be dismissed due to the reduction in vehicle crossing numbers as reported by the TMMS website hosted by ODOT and the reduction in recreational vessels with an air draft that would require bridge openings.

In the past three years we have received 66 complaints of delays at three of the drawbridges over the Maumee River. These complaints include: three written complaints against the Craig memorial Bridge, mile 3.30; thirty-one written complaints against the

CSX Railroad Bridge, mile 1.07; and thirty-two written complaints against the Norfolk Southern Railroad Bridge, mile 5.76. Most of the complaints against the two railroad bridges have been about a lack of communications between the vessels and the drawtender. Often the miscommunications have been between the drawtender and the railroad dispatchers. To improve communications, we propose to require all drawbridges over the Maumee River to maintain and operate a VHF-FM Marine Radio and in addition to the Marine Radio the Railroad Bridges at mile 1.07 and mile 5.76 will maintain and operate a telephone with a correct number to be placed on signage at the bridge.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on these statutes and Executive Orders.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the ability that vessels can still transit the bridge given advanced notice and that most restrictions against vessels have been removed.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section IV.A above this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule will not result in such

an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01, Rev.1, associated implementing instructions, and Environmental Planning Policy COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321-4370f). The Coast Guard has determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule promulgates the operating regulations or procedures for drawbridges. Normally such actions are categorically excluded from further review, under paragraph L49, of Chapter 3, Table 3-1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision-Making Portal at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type USCG- 2023-0184 in the search box and click "Search." Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If your material cannot be submitted using <https://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select "Supporting & Related Material" in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the <https://www.regulations.gov> Frequently Asked Questions webpage. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted, or a final rule is published of any posting or updates to the docket.

We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

2. Revise § 117.855 Maumee River to read as follows:

(a) The draw of the CSX Railroad Bridge, mile 1.07, will open on signal, except that from December 15 through March 31 the bridge will require at least 12-hours advance notice. The bridge will operate and maintain a VHF-FM Marine Radio and a telephone number.

(b) The draw of the Wheeling and Lake Erie Railroad Bridge, mile 1.80, will open on signal, except that from December 15 through March 31 the bridge will require at least 12-hours advance notice. The bridge will operate and maintain a VHF-FM Marine Radio.

(c) The draw of the Craig Memorial Bridge, mile 3.30, will open on signal, except that from December 15 through March 31 the bridge will require at least 12-hours advance notice. The bridge will operate and maintain a VHF-FM Marine Radio.

(d) The draw of the Martin Luther King Jr Memorial Bridge, mile 4.30, will open on signal, except that from December 15 through March 31 the bridge will require at least

12-hours advance notice. The bridge will operate and maintain a VHF-FM Marine Radio.

(e) The draw of the Norfolk Southern Railroad Bridge, mile 5.76, will open on signal, except that from December 15 through March 31 the bridge will require at least 12-hours advance notice. The bridge will operate and maintain a VHF-FM Marine Radio and a telephone number.

M. J. Johnston,

Rear Admiral, U.S. Coast Guard,

Commander, Ninth Coast Guard District.

[FR Doc. 2023-08863 Filed: 4/26/2023 8:45 am; Publication Date: 4/27/2023]